

## 48A C.J.S. Judges § 60

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### III. Term and Tenure of Office; Vacancy

#### D. Duration of Term

## § 60. Holding over

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### West's Key Number Digest

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**Generally, the person chosen to fill a judicial office is entitled to hold such office until his or her successor is selected and has qualified.**

In many jurisdictions, by force of constitution or statutory provisions, when the law creates a judicial office, and designates the term, the person chosen to fill the office will hold over until his or her successor is selected and has qualified.<sup>1</sup> Thus, a constitutional provision that officers continue in their offices until their successors are duly qualified applies to judges,<sup>2</sup> preventing gaps between the time one judge leaves office and another takes the office.<sup>3</sup> However, provisions for holding over refer to a reasonable extension of tenure, and there is generally no holding over beyond a vacating of office by the incumbent.<sup>4</sup>

In some jurisdictions, even in the absence of constitutional or statutory provisions, it is not only a judge's right but also his or her duty<sup>5</sup> to hold over. Additionally, where provided, a judge may hold over regardless of the cause that may prevent the selection and qualification of his or her successor.<sup>6</sup>

The principle of holding over does not apply to a newly created office in that there can be no incumbent in such instance.<sup>7</sup> Where the old judicial system or office ceases to exist at a given time, the incumbent cannot hold over until his or her successor has been elected and has qualified.<sup>8</sup> Where a judge has been elected and has qualified, but dies before the end of his or her predecessor's term of office, the predecessor is not entitled to hold over<sup>9</sup> unless the deceased judge-elect had not yet qualified.<sup>10</sup>

Where the law provides for holding over, the holdover period is as much a part of the judge's term as the period within the statutory term<sup>11</sup> so that the judge is a judge de jure during the hold over period.<sup>12</sup> Where, however, the law does not provide

for holding over, such holdover incumbent is not a judge de jure.<sup>13</sup> He or she is, rather, in for no term<sup>14</sup> but holds the office only until it is filled by competent authority<sup>15</sup> or until the next election.<sup>16</sup> His or her incumbency does not prevent the filling of the office by the authority duly authorized to do so.<sup>17</sup> A holdover incumbent merely performs the functions of the office until a duly qualified person appears<sup>18</sup> and is then bound to yield to that person.<sup>19</sup>

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## Footnotes

- 1 Del.—*Opinion of the Justices*, 305 A.2d 607 (Del. 1973).  
  
**Qualified as meaning elected**  
Ga.—*Hooper v. Almand*, 196 Ga. 52, 25 S.E.2d 778 (1943).  
  
**Qualified as meaning taking the oath of office**  
Okla.—*England v. Walters*, 2011 OK 36, 255 P.3d 421 (Okla. 2011).  
  
**Reelected judge prior to qualification**  
Tex.—*State v. Jordan*, 28 S.W.2d 921 (Tex. Civ. App. Amarillo 1930), writ dismissed w.o.j., (Oct. 29, 1930).
- 2 Okla.—*England v. Walters*, 2011 OK 36, 255 P.3d 421 (Okla. 2011).
- 3 Okla.—*England v. Walters*, 2011 OK 36, 255 P.3d 421 (Okla. 2011).
- 4 Ky.—*Hancock v. Queenan*, 294 S.W.2d 92 (Ky. 1956).
- 5 Conn.—*State v. Clark*, 87 Conn. 537, 89 A. 172 (1913).
- 6 Mo.—*State ex inf. Crow v. Dabbs*, 182 Mo. 359, 81 S.W. 1148 (1904).  
  
**Injunction against successor**  
Tex.—*Hardaway v. State*, 113 Tex. Crim. 436, 22 S.W.2d 919 (1929).
- 7 Ind.—*State ex rel. Gannon v. Lake Circuit Court*, 223 Ind. 375, 61 N.E.2d 168 (1945).  
  
As to the creation of a vacancy by virtue of the creation of a new judicial office, see § 73.
- 8 N.J.—*Krieger v. Jersey City*, 27 N.J. 535, 143 A.2d 564 (1958).  
  
**Repeal of statute creating office**  
Fla.—*State ex rel. Landis v. Thompson*, 125 Fla. 466, 170 So. 464 (1936).
- 9 Kan.—*State ex rel. Johnson v. Albert*, 55 Kan. 154, 40 P. 286 (1895).
- 10 Ark.—*Justice v. Campbell*, 241 Ark. 802, 410 S.W.2d 601 (1967).
- 11 Ill.—*People ex rel. Jonas v. Schlaeger*, 381 Ill. 146, 45 N.E.2d 30 (1942).
- 12 Tex.—*State v. Jordan*, 28 S.W.2d 921 (Tex. Civ. App. Amarillo 1930), writ dismissed w.o.j., (Oct. 29, 1930).
- 13 Conn.—*State v. Clark*, 87 Conn. 537, 89 A. 172 (1913).  
  
As to the definition of a judge de jure, see § 8.  
  
**Fact judge is holdover did not entitle judge to office**  
Wash.—*Nollette v. Christianson*, 115 Wash. 2d 594, 800 P.2d 359 (1990).

14 Conn.—*State v. Clark*, 87 Conn. 537, 89 A. 172 (1913).

**Indirect appointment**

Wash.—*State v. Geisness*, 140 Wash. 300, 248 P. 421 (1926).

15 Ala.—*City of Prichard v. Smith*, 477 So. 2d 375 (Ala. 1985).

16 Ark.—*McCoy v. Story*, 243 Ark. 1, 417 S.W.2d 954 (1967).

17 Conn.—*State v. Clark*, 87 Conn. 537, 89 A. 172 (1913).

18 Ga.—*Garcia v. Miller*, 261 Ga. 531, 408 S.E.2d 97 (1991).

**Unconfirmed appointee**

Fla.—*State ex rel. Landis v. Bird*, 120 Fla. 780, 163 So. 248 (1935).

19 Okla.—*Robertson v. Brewer*, 1945 OK 89, 195 Okla. 222, 156 P.2d 804 (1945).